

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL CHIARACANE AND LUIS
MALDONADO,

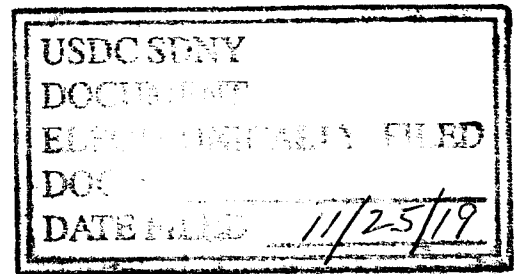
Plaintiffs,

v.

PORT AUTHORITY TRANS-HUDSON
CORPORATION,

Defendant.
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KEVIN NATHANIEL FOX
UNITED STATES MAGISTRATE JUDGE



ORDER

18-CV-2995 (KNF)

Before the Court is the plaintiffs' November 20, 2019 letter requesting permission "to use the videotaped *de bene esse* deposition of Dr. Lopa Patel ['Dr. Patel'] at trial in lieu of live testimony," pursuant to Rule 32(a)(4)(E) of the Federal Rules of Civil Procedure, which provides:

A party may use for any purpose the deposition of a witness, whether or not a party, if the court finds . . . that exceptional circumstances make it desirable—in the interest of justice and with due regard to the importance of live testimony in open court—to permit the deposition to be used.

In support of their request, the plaintiffs submitted Dr. Patel's affidavit, stating that: (1) she is the plaintiffs' treating pulmonologist; (2) she runs the "New Jersey Pulmonary and Sleep Associates" practice with her partner Hetal Patel, M.D. located in Montclair, New Jersey; (3) their "practice is extremely busy every day and patient appointments are made weeks in advance"; (4) "[t]aking even half of a day off to testify in court will cause an undue financial burden to our practice"; and (5) "[i]n addition, it will cause a burden to our patients who have had appointments scheduled for weeks which would then have to be rescheduled." The defendant "has no objection to this request."

The plaintiffs failed to establish that exceptional circumstances make it desirable to permit Dr. Patel's videotaped deposition to be used at trial. The conclusory assertion of an "extremely busy" practice is not sufficient to establish exceptional circumstances where, as here, the plaintiffs' November 19, 2019 request to adjourn the trial, from January 6, 2019, was granted. The trial will now commence on April 13, 2020, giving Dr. Patel ample time to schedule her patients' appointments without any disruption or burden to her practice. Accordingly, the plaintiffs' request to use the videotaped deposition of Dr. Patel at trial, Docket Entry No. 132, is denied.

Dated: New York, New York
November 25, 2019

SO ORDERED:



KEVIN NATHANIEL FOX
UNITED STATES MAGISTRATE JUDGE